Supreme Court, U. S.
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In The

# SUPREME COURT OF THE UNITED STATES

October Term, 1976

NO. 75-1703

**WRIGHT MOTORS, INC.,**

Petitioner (Respondent below)

-vs-

**NATIONAL LABOR RELATIONS BOARD,**

Respondent (Petitioner below)

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDIX

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In The

**SUPREME COURT OF THE UNITED STATES**

October Term, 1976

No._____

**WRIGHT MOTORS, INC.,**

Petitioner (Respondent below)

-vs-

**NATIONAL LABOR RELATIONS BOARD,**

Respondent (Petitioner below)

•

# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The Petitioner, Wright Motors, Inc., (hereafter referred to as "Wright") respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on January 20, 1976.

## OPINION BELOW

Apparently the opinion of the Court of Appeals will not be published because it issued only as an order of the court and, absent the caption as No. 75-1514 and the heading as herein, the opinion is as follows:

"Upon consideration of the record, the briefs, and the oral argument, we conclude that there was no abuse of discretion on the part of the Regional Director in sustaining the challenges to the ballots of employees Joe Wright and Steve Groves in the representation election. *NLRB v. Caravelle Wood Products, Inc.*, 466 F. 2d 675 (7th Cir. 1972). Accordingly, the Board properly held that the Company (Respondent) violated Section 8 (a) (5) of the National Labor Relations Act by refusing to bargain with the duly certified representative of its employees.

The Board's complaint under section 10 (e) of the Act was not time barred by section 10 (b) of the Act. *NLRB v. Basic Wire Products, Inc.*, 516 F. 2d 261 (6th Cir. 1975); *NLRB v. Louisiana Bunkers*, Inc., 409 F. 2d 1295 (5th Cir. 1969).

IT IS ORDERED that the Board's order shall be enforced."

## JURISDICTION

The jurisdiction of this Court is involved under 28 U.S.C. 1254 (1) and the Fifth Amendment to the Constitution of the United States.

## QUESTIONS PRESENTED

I. The Court Below Erroneously and Unconstitutionally Refused to Set Aside an Opinion and Order of the National Labor Relations Board which found that relatives of those involved in the operation and ownership of a closely held corporation could not vote in a representation election held at Petitioner's place of business.



II. The Court below Erroneously and Unconstitutionally Refused to Set Aside an Opinion and Order of the National Labor Relations Board which found that the Unfair Labor Practice Charges filed in this case were not time barred by the applicable period of limitations.

## CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent constitutional provision involved in this case is as follows:

> ". . . nor shall any person . . . be deprived of life, liberty or property, without due process of law; . . ." Fifth Amendment to the Constitution of the United States.

From Wright's point of view this case involves a construction of Section 2 (3) of the National Labor Relations Act, which provides in relevant part that:

> "The term 'employee' shall include any employee, . . . unless this subchapter explicitly states otherwise . . . but shall not include any individual employed by his parent or spouse . . ." 29 U.S.C. 152 (3).

And in turn, a construction of the relationship between Section 2 (3) and 9 (b) of the Act which provides in relevant part that:

> "The Board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the union appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . . ." 29 U.S.C. 159 (b).

The gloss placed on the statute by the Board and approved by the Court below raised a substantial federal and constitutional issue as to how far the Board can go in reading the statute which controls its actions.

Similarly, from Wright's point of view this case involves a construction of Section 10 (b) of the National Labor Relations Act, which provides in relevant part that:

> ". . . no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge with the Board . . ." 29 U.S.C. 160 (b).

Once again the gloss placed on the statute by the Board and approved by the Court below raises a substantial federal and constitutional issue as to how far the Board can go in reading the statute which controls its actions.

## STATEMENT

Wright operates an automobile dealership and service operation in Evansville, Indiana and is engaged in the sale, repair and distribution of automobiles and related products. (Appendix 4 (b) hereafter "A." and page numbers). A Board conducted election was held at Wright on June 5, 1973 and the results were 14 votes cast for a labor union and 12 votes against with 3 ballots challenged. (A. 31-33; 57-58, 4 (a) - (b), 5). Because the challenged ballots affected the election results, at the Regional level the Board conducted an investigation of the challenges, all of which were made by the union involved. On August 9, 1973 the Board's Regional Office held that the challenged ballots of two employees, Wright and Groves, should be sustained because their interest were more closely allied with their parents, who were principal stockholders and officers of Wright, than with their fellow employees. (A. 31-33; 9-12; 18-29). The Regional Director further recommended that the remaining challenge not be resolved since it was no longer



determinative with, however, the reservation that if his decision were overruled a hearing be held on this challenged ballot and, as well, any other ballots subject to a hearing. (A. 9-12).

On August 17, 1973, Wright filed exceptions to the Decision of the Regional Director and on October 19, 1973, the Board denied these exceptions and certified the union as the representative of the employees of Wright. (A. 31-33). Thereafter, Wright filed a motion for reconsideration of the representation proceeding and, also, arguing that a hearing be held on the three challenged ballots. On November 6, 1973, the Board denied this motion. (A. 34-35; 58; 41).

After the Board's issuance of a certification of representative on October 19, 1973 the union made a demand for recognition on January 30, 1974 and this demand was refused on February 1, 1974. Thereafter, on July 8, 1974, the union made another demand for recognition and this second demand was refused on July 17, 1974. Finally, on October 2, 1974, the union filed charges against Wright based upon a refusal to bargain within the meaning of Section 8 (a) (5) of the National Labor Relations Act, 29 U.S.C. 158 (a) (5). (A. 45 (A) - (D); A. 56).

The Board issued a complaint upon the charges filed by the union on October 10, 1974, and Wright filed its answer on or about November 1, 1974, affirmatively alleging that all three challenged ballots should have overruled and the votes counted and that the unfair labor practices involved in the case were not timely filed and barred by Section 10 (b) of the Act and that to hold otherwise would amount to a denial of due process within the meaning of the Constitution of the United States. (A. 47-48). Thereafter, the Board filed a motion for summary judgment through its General Counsel and such motion was sustained. (A. 52-54; 56).

## REASONS FOR GRANTING THE WRIT

### I.

### THE COURT BELOW ERRONEOUSLY AND UNCONSTITUTIONALLY REFUSED TO SET ASIDE AN OPINION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD WHICH FOUND THAT RELATIVES OF THOSE INVOLVED IN THE OPERATION AND OWNERSHIP OF A CLOSELY HELD CORPORATION COULD NOT VOTE IN A REPRESENTATION ELECTION HELD AT PETITIONER'S PLACE OF BUSINESS.

It is the position of Wright that Section 2 (3) of the Act means what it says: "The term 'employee' shall include any employee . . . unless this subchapter explicitly states otherwise . . . but shall not include any individual . . . employed by his parent or spouse. . ." 29 U.S.C. 152 (3). Thus, when the Court below and the Board found that the two employees involved in this case were "employees", there was no basis for forbidding them the vote without an explicit statutory basis for the exclusion. Similarly, the reliance of the Court below and the Board in Section 9 (b) of the Act is misplaced because this part of the Act means what it says: "The Board shall decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . ." 29 U.S.C. 159 (b). There is nothing in the statute about so-called community of interest or who is related to whom, only how a collective bargaining unit will be determined.

To repeat, it is the position of Wright that the above-mentioned statutory language is not at all ambiguous and simply means what it says. That is, without fitting a specific exception by explicit language, an employee is covered by the Act. Certainly, once this is decided, it would seem impossible to take



the step of saying even though someone is an employee within the meaning of Section 2 (3) under Section 9 (b) he can be excluded from a collective bargaining unit because he is in fact not an employee, i. e., the same determination cannot be made twice under the same statute. That is, 9 (b) means what it says by stating that the need for placing employees under Section 2 (3) in an appropriate bargaining unit furthers the statutory purpose. In this case, both the Court below and the Board, as a matter of law, have ignored the governing statute. A recitation of the facts indicates this.

With reference to Steve Groves the record shows that he is the son of Clarence Groves and Eleanor Groves. Clarence Groves works at Wright as a Service Writer and has no managerial duties at Wright. (A. 19) Eleanor Groves owns about 28% of the stock of Wright and she is related to the other two stockholders, her brother and sister. (A. 19) Mrs. Groves is not engaged in any form of active management. (A. 19) In other respects, Steve Groves works in a capacity similar to that of other employees. (A. 18)

With reference to Joseph Wright the record shows that he is the son of George Wright who owns 51% and a fraction of the stock of Wright. (A. 19) Similarly, Joe Wright is related to the other two stockholders, they are his aunts. (A. 19) In other respects, Joe Wright works in a capacity similar to that of other employees. (A. 29).

Although Wright has been unable to find in the Act any reference to the term "special status", it is also difficult in the extreme to give this term any precise meaning. Under the guidelines established by the Court below in *NLRB v. Caravelle Woods Products, Inc.*, 466 F. 2d 674 (CA-7 1972) at 679, there is some indication of a factual approach to defining this term. However, the Board and the Court below have really made no determination in this case as to special status other than the one, which Wright asserts shortcircuits the statute,

relating to kinship. And this absent any finding that the corporate structure in question is anything other than lawful.

What Wright, therefore, believes is at the heart of the legal error on this issue is the simple fact that there has been an attempt in this case to ignore factors other than family relationship in deciding that the two employees in question, Wright and Groves, lack a community of interest with other employees in the appropriate bargaining unit absent any straight-forward finding that they are not employees under Section 2 (3) of the Act. This is particularly true when Section 9 (b) covers the working relationship, not the family relationship. This legal position as read by Wright would require the exclusion of relatives of union officials of all sorts from voting in elections if it is to be consistent as, apparently, the law requires. *NLRB v. Savair Manufacturing Company*, 94 S. Ct. 495, 499-501 (1974).

> The legal concept applied in this case seems to boil down to this. Even though an employee may be performing work under the same terms and conditions as other employees, he cannot be allowed to vote in an NLRB election where his kinship to anyone with a substantial ownership interest can be shown. This is not what the Act contemplates or authorizes.

The facts clearly show Steve Groves just doesn't work for his "parent or spouse". If the statute be applied as it reads the same is true of Joseph Wright, since his sole employer is Wright Motors, Inc., not George A. Wright. Section 9 (b), and there are hundreds of cases on point, related to work performed and the conditions under which similar work is performed, not who is related to whom. In an often cited case in which the Board discusses the function of 9 (b) the following observations are made:

> "First and foremost is the principle the mutu-



> ality of interest in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit." *Continental Baking Company*, 99 NLRB 774, 782 (1952) also see discussion in 1 LRX § 7, pp. 47-50.

Were the Board's and Court below's position taken to its logical conclusion rather odd and unlawful bargaining units would be within the board's administrative discretion. For example under the "community of interest" rubric professional employees with a close community of interest with other employees could be included in the same bargaining unit with other employees contrary to Section 9 (b) (1) of the Act, 29 U.S.C. 159 (b) (1); *Leedom v. Kyne*, 79 S. Ct. 180 (1958). This is obviously why at one time the Board followed Wright's position and then reversed itself. See *International Metal Products Co.*, 107 NLRB 64, 67 (1953) and compare it with *Foam Rubber City No. of Florida, Inc.*, 167 NLRB 623 (1967).

II.

THE COURT BELOW ERRONEOUSLY AND UNCONSTITUTIONALLY REFUSED TO SET ASIDE AN OPINION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD WHICH FOUND THAT THE UNFAIR LABOR PRACTICE CHARGES FILED IN THIS CASE WERE NOT TIME BARRED BY THE APPLICABLE PERIOD OF LIMITATIONS.

The sequence of events in this aspect of this case is as follows:

| Date and Year | Event |
|---|---|
| October 19, 1973 | Certification of Representative (A. 33) |

| | |
|---|---|
| January 30, 1974 | Demand for recognition (A. 45 (A) ) |
| February 1, 1974 | Refusal of recognition (A. 45 (B) ) |
| July 8, 1974 | Demand for recognition (A. 45 (C) ) |
| July 17, 1794 | Refusal of recognition (A. 45 (D) ) |
| October 2, 1974 | Charges of refusal to bargain filed. (A. 42) |

The above clearly shows that almost a year after the issuance of a certification in this case, the Union filed charges with the Board. In *NLRB v. Basic Wire Products, Inc.*, 516 F. 2d 261 (CA-6 1975) another Court of Appeals held that under somewhat similar facts the period of limitations had not run. This decision is, apparently, based on the concept of continuing demand, which means, in this case, that the Union's first demand to bargain in January tolled the period of limitations until its second demand in July. (This is somewhat akin to saying that in civil litigation in the tort field a series of letters within the period of limitations would allow an injuried party to ignore the period.) Additionally, this position seems to say the same offense relating to the same set of facts goes on so long as one party writes letters. For example, if one refuses to sign a contract in January a similar refusal in July creates a new offense. Compare *NLRB v. Basic Wire Products, Inc.*, 516 F. 2d 261 (CA-6 1975) with *NLRB v. McCready and Sons, Inc.*, 482 F. 2d 872 (CA-61973) wherein it was held such a second refusal to sign a contract did not create a new claim.

Section 10 (b) of the Act, 29 U.S.C. 160 (b), provides in relevant part that:



> ". . . no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge with the Board. . ."

There is nothing in the statute about the period being tolled by writing a series of letters relating to the same conduct. Neither is there anything about a certification year being an exception to the limitation period. It is Wrights' contention that the following would apply to the facts in this case.

> "It is doubtless true that S 10 (B) does not prevent all use of evidence relating to events transpiring more than six months before the filing and service of an unfair labor practice charge. However, in applying the rules of evidence as to the admissibility of past events, due regard for the purposes of S 10 (b) requires that two different kinds of situations be distinguished. The first is one where occurences within the six-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices. There, earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose S 10 (b) ordinarily does not bar such evidentiary use of anterior events.
>
> The second situation is that where conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice. There the use of the earlier unfair labor practice is not merely 'evidentiary', since it does not simply lay bare a putative current unfair labor practice. Rather, it serves

> to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit that event itself to be so used in effect results in reviving a legally defunct unfair labor practice." *Local Lodge 1424, Machinists v. NLRB*, 80 S. Ct. 822, 826 (1960).

It would seem to be a strange use of human events to say that in this case that for the purpose of finding a violation of the Act on the one hand the refusal to bargain on the part of Wright occurred in July when in fact it occurred in February. Even the language in Wright's July refusal relates back to the date when, if any, the unfair labor practice occurred, February 1, 1974. (A. 45 (B) ) The policy in this case is clear--the Board and the Court below want to rely on the February events but not substantively, which would defeat the very purpose of having a period of limitations. The event that triggered any obligation to bargain has to have been the Board's certification issued in October--in the civil context this is the date of the accident--making the circumstances in this case rather unusual in that the union rested on its oars from Wright's point of view for almost a year, not just six months.



## CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit and Petitioner asks for all further and proper relief.

Respectfully submitted,

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# APPENDIX

APPENDIX

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Wright Motors, Inc.
Board Case Nos. 25-CA-6576
25-RC-5320

25-RC-5320

| | |
|---|---|
| 3.27.73 | Petition filed |
| 4. 3.73 | Regional Director's notice of representation of hearing dated |
| 4. 9.73 | Union's request for postponement of hearing dated |
| 4.12.73 | Regional Director's Order rescheduling hearing dated |
| 4.27.73 | Parties Stipulation for a consent Election dated |
| 6. 5.73 | Tally of Ballot of Election held, June 5, 1973. |
| 6.12.73 | Union's objections to conduct Affecting Election. |
| 8. 9.73 | Report on Objection to conduct affecting results of Election challenged Ballot and recommendations to the Board, and Order Consolidating Cases dated |
| 8.20.73 | Employer's Exceptions and Motion to Consolidate and Vacate received |
| 9.19.73 | Board's Decision and Certification of Representative |
| 10.21.73 | Employer's Exceptions and Motion to reconsider received |

| | |
|---|---|
| 11. 6.73 | Board's Order denying Motion dated |
| | 25-CA-6576 |
| 10. 2.74 | Charge filed in Case No. 25-CA-6576 |
| 10.10.74 | Complaint and Notice of Hearing dated |
| 10.17.74 | Answer to Complaint dated |
| 10.31.74 | General Counsel's Motion to Strike Portions of Respondent's Answer and Motion for Summary Judgment dated |
| 11.19.74 | Order Transferring Proceedings to the Board and Notice to Show Cause dated |
| 11.29.74 | Respondent's Response to Notice to Show Cause dated |
| 1.23.75 | The National Labor Relations Board Decision and Order, dated |
| 2. 6.75 | Respondent's Motion and exception, dated |
| 3.12.75 | Board's Order denying Respondent's Motion and Exceptions, dated |



9

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION TWENTY-FIVE**

**WRIGHT MOTORS, INC.**

Employer

and

Case No. 25-RC-5320
Case No. 25-CA-5626

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

Petitioner

*REPORT ON OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION, CHALLENGED BALLOTS AND RECOMMENDATIONS TO THE BOARD, AND ORDER CONSOLIDATING CASES*

Pursuant to a Petition filed on March 27, 1973 and a Stipulation for Certification Upon Consent Election approved by the undersigned, an election was conducted on June 5, 1973 among certain employees [1] of the above-named Employer to determine whether they desire to be represented by the Petitioner for the purposes of collective bargaining. The Tally of Ballots served upon the parties at the conclusion of the election shows the following results:

| | |
|---|---|
| Approximate number of eligible voters | 29 |
| Void ballots | None |

[1] The appropriate unit as set forth in item 12 of the Stipulation is as follows: "All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment; but excluding all office clerical employees, dispatchers, all professional employees, all guards and supervisors as defined in the Act."

"Appendix F"

| | |
|---|---|
| Votes cast for the Petitioner | 14 |
| Votes cast against the Petitioner | 12 |
| Valid votes counted | 26 |
| Challenged ballots | 3 |
| Valid votes counted plus challenged ballots | 29 |

The challenged ballots are determinative of the results of the election. On June 12, 1973 the Petitioner filed timely objections [2] to conduct affecting the results of the election. Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, an investigation was conducted under the direction and supervision of the undersigned who, after considering the results thereof, reports thereon as follows:

## THE OBJECTIONS

The Petitioner's objections allege, in relevant part:

10 Shortly before the polls were to be opened on election day, the observer for the Employer contacted one or more eligible voters and promised, on behalf of the Company, that if the Union were voted out the Employer would confer certain benefits on the employees.

It is the position of the Union that all three challenged voters were not properly a part of the voting unit and were sent in to vote solely for the purpose of undermining the majority status of the Union and in order to delay the ultimate certification of the Union.

2 Both parties were requested to furnish, and have furnished, various evidence in support of their respective positions as to the issues raised by the Challenged Ballots and the Objections.



## THE CHALLENGED BALLOTS

The Petitioner challenged the ballots of Steve Groves, Katie Sargent, and Joe Wright. Groves was challenged because he is the son of the Vice-President of Employer. Katie Sargent was challenged as "not in the unit – cleaning lady," and Joe Wright was challenged because he is the son of the "owner" of Employer.

### Groves and Wright

During the investigation of the Challenged ballots, evidence was adduced to the effect that Joe Wright is the son of the President of Wright Motors, Inc., George Wright, and that George Wright owns between 51 and 52% of the stock in Wright Motors. Steve Groves is the son of Clarence Groves and Eleanor Groves. Eleanor Groves, the sister of George Wright, owns nearly 28% of the stock in Wright Motors, Inc. Both young men live with their parents. The remaining 20% of the stock in Wright Motors, Inc. is owned by George Wright's sister, Abigail Whitehead. The only officers in Employer are George Wright; Clarence Groves; and Horace Lett, the Secretary and Treasurer. The investigation reveals that George Wright directs and operates the Employer with the assistance of his Sales Manager, Malcomb Clayton, who assumes active leadership of the Company in Wright's absence. Both Clarence Groves and Horace Lett have the authority to countersign corporate checks; however, the Employer alleges, and there is no evidence to the contrary, that Groves is not effectively involved in the day-to-day direction of the Company. To the contrary, the evidence indicates that his daily function is as a service writer. George Wright states in his affidavit that "I chose not to have Clarence Groves vote since I did not want to create any dissension."

Although Groves' father, Clarence Groves, is not actively engaged in the daily direction of the Employer, it is noted that his mother owns some 28% of the Employer and his uncle owns a controlling 52% of the Employer and an aunt, Abigail White-

head, owns the balance. Therefore, under the guidelines enunciated by the Board in *Foam Rubber City #2 of Florida, Inc. d/b/a Scandia,* 167 NLRB 623 and followed in *Cerni Motor Sales, Inc.,* 201 NLRB No. 133 and *Parisoff Drive-In Market, Inc.,* 201 NLRB No. 102 "*children of principals* of closely held corporations, because of their relationship with a substantial owner of this type of enterprise, have interests more closely identified with management than with their fellow employees" and therefore would be excluded under Section 9 (b) of the Act. It becomes apparent that both Joe Wright and Steve Groves, both of whom live at home with their parents, would necessarily have interests in the Employer more closely identified with their parents, the owners and principals of the company, than with their co-workers.

Accordingly, for the reasons cited above, it is recommended that the challenges to the ballots of Groves and Wright be sustained. The remaining challenged ballot (Sargent) is no longer determinative of the outcome of the election and will not, therefore, be commented on here. Should it become necessary to make a determination as to the eligibility of Sargent, it is recommended the matter be resolved by a formal hearing inasmuch as the evidence presented by the parties in support of their positions raises questions of credibility which could best be resolved in a hearing.

11 THE OBJECTIONS [3]

The first portion of the objections alludes to an alleged promise of benefits by the Employer observer prior to the election. The Union provides one witness to this alleged incident, witness A, who states:

> That on June 5, 1973, at approximately 10:00 A.M., Mr. Jim LeMond came to my work area and told me that Mr. George Wright made a statement, in a meeting with the salesmen, that if the Union was voted out, he would pay the weekly guarantee that the employees wanted, would straighten out the parts room problem and would get better-priced repair orders and the repair orders written up faster.

There is no evidence that the observer (LeMond) is or was an agent of the Employer. LeMond denies the conversation and denies ever hearing Wright make such a statement to anyone. Wright denies any such statement at any time to anyone. Assuming *arguendo* the credibility of witness A over the Employer observer, LeMond, there is still insufficient evidence of agency to show that such a statement by LeMond can be fairly attributed to the Employer and thus be objectionable.

The second portion of the objections alleges that the three challenged voters were deliberately sent in by the Employer to undermine the majority status of the Union and to delay certification of the Union. The fact that the Employer holds a different view from that of the Union with regard to the eligibility of the three persons in question is not, in and of itself, objectionable even assuming he held this view so strongly that he encouraged the three to vote in the election.

## ADDITIONAL ALLEGED OBJECTIONABLE CONDUCT

During the course of the investigation of the listed objections and the co-existing "C" case, 25-CA-5626, evidence of additional allegedly objectionable conduct was adduced. As the matters raised by the additional alleged objectionable conduct brought to the undersigned's attention during the course of the investigation are alleged as Unfair Labor Practices in the complaint in Case No. 25-CA-5626, more particularly those allegations of paragraphs 5 (a) through (j) of said complaint occurring between March 27 and June 5, 1973 inclusive, it appears

[3] In the event recommendations 1 (a) and (b) are affirmed, Petitioner's objections become moot, and in such circumstances it is recommended that they not be passed on by the Board.

that the issues raised by said conduct give rise to substantial and material issues concerning the validity of the election conducted herein.

It is recommended that the Petitioner's specific objections be overruled in their entirety. Since the additional objectionable conduct alluded to above is already the subject of an Unfair Labor Practices complaint, the instant case will be consolidated with 25-CA-5626 for the purpose of a hearing, ruling, and decision by an Administrative Law Judge.

## RECOMMENDATIONS AND ORDER

For the reasons hereinabove set forth:

1. It is recommended that:

   a) The challenges to the ballots of Groves and Wright be sustained.



   b) An appropriate revised tally of ballots and certification of representative be issued.

   c) The listed objections to the election be overruled.

   d) In the event the Board does not follow or affirm recommendations 1 (a) and (b), the matter be remanded for a hearing on (A) the eligibility of Sargent, Groves, and/or Wright as may be appropriate and (B) the above-discribed additional alleged objectionable conduct alleged in paragraphs 5 (a) through (j) of the Complaint in Case No. 25-CA-5626. [4]

[4] Pending the Board's decision with regard to the challenged ballots, the 8 (a) (5) portion of 25-CA-5626 is being held in abeyance.



2. The undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay, IT IS ORDERED:

That pursuant to Section 102.33 of the Rules and Regulations, Series 8, as amended, of the National Labor Relations Board, that Cases Nos. 25-RC-5320 and 25-CA-5626 be, and they hereby are, consolidated for the purposes of hearing, ruling, and decision by the Administrative Law Judge and that thereafter Case No. 25-RC-5320 be transferred to and continued before the Board in Washington, D. C. and that the provisions of Sections 102.46 and 102.69 (e) of the above-mentioned Rules shall govern the filing of exceptions. [5]

DATED AT Indianapolis, Indiana this 9th day of August 1973.

Wm. T. Little
Regional Director
National Labor Relations Board
Region Twenty-five
ISTA Center, 150 West Market St.
Indianapolis, Indiana 46204

[5] Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D. C. Exceptions must be received by the Board in Washington by August 20, 1973.

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**WASHINGTON, D. C.**

**WRIGHT MOTORS, INC.**

Employer

and

Case No. 25-RC-5320
Case No. 25-CA-5626

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

Petitioner

**EMPLOYER'S (1) EXCEPTIONS AND (2) MOTION TO CONSOLIDATE AND VACATE**

The Employer now files its Exceptions to the Regional Director's Report on Objections, Challenged Ballots and Recommendations, and Motion as follows:

1. The Employer excepts to the Regional Director's Recommendations and Order (as set out at pages 3 and 4 of his Report) to the effect that the challenges to the ballots of employees Steve Groves and Joe Wright be sustained, for the following reasons. Section 2 (3) of the Act provides in relevant part that:

> "The term 'employee' shall include any employee, . . . unless this subchapter explicitly states otherwise, . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse. . ."



When read in light of Exhibits A through D annexed hereto, it seems incredible that the Regional Director could conclude, as he does, (at page 2 of his Report) that Steve Groves is not an employee within the meaning of the Act. The annexed affidavits show that Groves occupies no special position with the company due to the fact that his father is related by marriage to the principal stockholder of the Employer and that his father through marriage has some stock ownership in Employer. What the annexed affidavits show is the simple fact that Steve Groves is not employed by his "parent or spouse." The facts show that as a rank and file employee of an Indiana corporation, Wright Motors, Inc., were he denied the right to vote in an election, his rights under Section 7 of the Act would be violated and in effect, both this Employer and Steve Groves would be denied equal protection and due process of law. In sum, the Board's position on this issue is contrary to the facts as shown by the annexed affidavits and is contrary to law. See the observation of the Court in *N.L.R.B. v. Caravelle Wood Products, Inc.*, 466 F. 2d 675 (CA-7 1972) The same reasoning applies to Joe Wright, and the facts in support of this position are found in Exhibit D annexed hereto, very clearly showing that Wright performs duties that are exactly the same as those of other bargaining unit employees and therefore the challenge to his ballot should be denied. See *Printing Industry of Delaware*, 131 NLRB 1100 (1961).

a. There are compelling policy reasons as to why the challenges to the ballots of Joe Wright and Steve Groves should be denied, since both young men perform bargaining unit work. Section 7 of the Act and Section 2 (3) of the Act have a very plain meaning, which is to the effect that to be excluded from the Act's coverage a person must be "employed by his parent or spouse." The facts in this case show that if the Regional Director's position is sustained through his reliance on *Foam Rubber City #2*, 167 NLRB 623 (1967), both employees in question would be denied their statutory rights, since they are are not in fact employees who fit the exception contained in Section 2 (3) of the Act. If Congress had intended to broaden

the exclusion contained in Section 2 (3) it could have done so by applying the statute to closely held corporations, but it chose not to do so. Unless the Board can by administrative amendment graft new language into the Act itself, it would seem beyond doubt that these challenges must be denied. Similarly, the Regional Director's Report contains language indicating special status, where the facts as shown by the exhibits annexed hereto show that none exist. Thus, even under the current Board rules this would amount to a wooden or per se application of the rules concerning the voting rights of relatives of those who own stock in closely held corporations.

2. As the Regional Director indicates in his Report (at page 4) there is now pending a companion complaint case, 25-CA-5626, which is now set for hearing on October 2, 1973. Also, Employer would request that the Board take administrative notice of the fact that there is also pending a Section 8 (a) (5) charge which as yet has not been finally disposed of by the Regional Office. Since there is obviously a relationship between the status of the ballots challenged herein and the 8 (a) (5) charge as well as the outcome of the representation election held herein, because the rulings on the challenges are in fact
16 determinative, the vote being 14 for Petitioner and 12 for Employer, unless the trial date herein is vacated until such time as a final ruling is had on the charges alleging a violation of Section 8 (a) (5) of the Act, Employer in this case as Respondent in the companion complaint case may well be subjected to not only a series of trials, but in addition prejudice of its rights with reference to the Board's policies concerning separation of complaint and representation cases, as well as its right to due process of law, in that in preparing a defense to the charges upon which a complaint has already been issued, it is in the dark as to whether or not at some later date an 8 (a) (5) violation may become part of a complaint. This is particularly so in this case, where the 8 (a) (5) violation would arise directly out of a determination in the representation case. This matter is further complicated by the relationship between the above



and Employer-Respondent's rights of appeal as granted it under Section 10 of the Act, which might well be prejudiced were the complaint case now set for October 2, 1973 not vacated until such time as a final determination is had in the instant representation case as to the outcome of the election, as that in turn relates to the issuance or non-issuance of a complaint relating to an alleged 8 (a) (5) violation. As an alternative, however, the Board might direct the Regional Director to post-haste make a decision on the 8 (a) (5) issue, about which of course, it is Employer's position that the charge is without merit.

17 WHEREFORE, Employer asks that the challenges to the ballots of Steve Groves and Joe Wright be overruled, and for all further and proper relief in the premises.

Respectfully submitted,

**KAHN, DEES, DONOVAN & KAHN**

By

Joseph A. Yocum
Attorneys for Employer

**KAHN, DEES, DONOVAN & KAHN**
305 Union Federal Building
Evansville, Indiana 47708
Of Counsel

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WRIGHT MOTORS, INC.

Employer

and

Case 25-RC-5320

LOCAL 215 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Petitioner

NLRB
25th Region
Indianapolis
'73 Oct. 23 AM 10:46

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Petition and Stipulation for Certification up Consent Election executed by the parties on April 4, 1973, an election by secret ballot was conducted on June 5, 1973, among certain employees of the Employer in the stipulated unit under the direction and supervision of the Regional Director for Region 25. At the conclusion of the election the parties were furnished with a tally of ballots which showed that of approximately 29 eligible voters, 14 cast ballots for, and 12 cast ballots against, the Petitioner, and 3 cast challenged ballots. The challenges were sufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, after notice to the parties, and opportunity to submit relevant evidence, the Regional Director conducted an investigation of the issues raised by the challenges and objections. On August 9, 1973, he issued and duly served upon the parties his Report on Challenged Ballots and Objections in which he recommended that the challenges to the ballots cast by Joe Wright and Clarence



Groves be sustained and that the issues raised by the challenge to the ballot cast by Katie Sargent be resolved by a hearing, if such ballot becomes determinative of the outcome of the election.

Thereafter, the Employer filed exceptions to the Regional Director's recommendations regarding the challenged ballots, a motion to vacate the date set for a hearing on an unfair labor practice complaint and a motion to consolidate.

32 Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has assigned the issues in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (c) of the Act:

> All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees,

all guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report, the Employer's exceptions thereto and motions for further action, and hereby adopts the Regional Director's findings and recommendations. [1]

33 Accordingly, as the tally shows that Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has obtained a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

## CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and that, pursuant to Section 9 (a) of the National Labor Relations Act, as amended, the said labor organization

1 In our opinion, the Employer's exceptions and motions raise no material issues which would warrant reversal or modification of the Regional Director's findings or recommendations. The Regional Director recommended that certain of the Petitioner's listed Objections be overruled and that certain alleged objectionable conduct which came to his attention during the investigation of Case 25-CA-5626 be consolidated with the unfair labor practice case. Inasmuch, however as we are adopting his recommendation that the challenges to ballots cast by certain employees be sustained, the Petitioner has now received a majority of the valid ballots cast and is entitled to certification, thus making moot the objections as they pertain to the election. Accordingly, we adopt the Regional Director's recommendation that the objections not be passed upon by the Board, and find that it is unnecessary that this case be consolidated with Case 25-CA-5626.



is the exclusive representative of all employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Dated, Washington, D. C., October 19, 1973.

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Panello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD



## UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

**WRIGHT MOTORS, INC.,**

Employer

and Case No. 25-RC-5320

**LOCAL 215 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,**

Petitioner

## EXCEPTIONS AND MOTION TO RECONSIDER

The employer now moves the Board to reconsider its Decision and Certification of Representatives in the above case for the following reasons:

1. There is now pending before the National Labor Relations Board, cases known on the records of the Board as Case No. 25-CA-5626 and Case No. 25-CA-5742, in which the employer herein is the respondent, and the issues involved in said cases in turn involve issues in the instant proceeding, Case No. 25-RC-5320, in that the bargaining unit status of the employees in this case would, of necessity, have to be litigated in the companion unfair labor practice cases.

2. Perhaps the Board has not examined the record in the instant case as closely as it should with particular reference to whether or not a hearing should be held on the bargaining unit status of three of the employees involved in this case instead of just one, namely Katie Sargent. Although the Board indicates that Joe Wright is in issue, it indicates also that a Clarence Groves is in issue, and there is no Clarence Groves in issue. Because of this, the employer feels that there may have been some error in the analysis of the record, since the employee in issue is Steve Groves, and Clarence Groves is his
35 father, an employee not in issue in this proceeding. However, as the record shows, both Clarence Groves and his son, Steve Groves, work in the bargaining unit.

3. In light of both of the above specifications, unless the employer is granted a hearing on all three challenged ballots and this hearing is consolidated with the companion complaint cases, Nos. 25-CA-5626, and 25-CA-5742, the employer will have been denied due process of law, particularly with reference to the Board's arbitrary rule with relation to the inclusion or exclusion of relatives of management, which in the instant case in effect denies Joe Wright and Steve Groves the rights guaranteed them by Section 7 of the Act, and at the same



time discloses a subversion of the principle of parity of rights as to unionization or to refrain from unionization, also established under Section 7 of the Act.

A.

Ultimately the Board's Decision and Certification of Representatives in this case is not supported by substantial evidence on the record when considered as a whole, and also said Decision and Certification is based on both incorrect principles of law and/or improper application of the acceptable principles of law. For purposes of this Exceptions and Motion to Reconsider, employer would incorporate by reference all of its pleadings filed to date in this case as well as the arguments based on the facts and law contained therein, as further shown by Exhibit A annexed hereto.

Respectfully submitted,

KAHN, DEES, DONOVAN & KAHN

By _____
Attorney for Employer

Kahn, Dees, Donovan & Kahn
305 Union Federal Building
Evansville, Indiana 47708

October 23, 1973

41

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WRIGHT MOTORS, INC.**

Employer

and Case 25-RC-5320

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

Petitioner

'73 Nov 7 AM 10:16

**ORDER DENYING MOTION**

On October 19, 1973, the National Labor Relations Board issued a Decision and Certification of Representative in the above-entitled proceeding. In the Decision, the Board stated, *inter alia,* that it was unnecessary that this case be consolidated with Case 25-CA-5626.

Thereafter, on October 25, 1973, the Employer filed a Motion for Reconsideration in which it, *inter alia,* contended the Board's Decision was in error, and requested that Case 25-RC-5320 be consolidated with Cases 25-CA-3626 and 25-CA-5742 for a hearing with respect to challenged ballots cast by Joe Wright, Katie Sargent, and Steve Groves. [1]

The Board, having duly considered the matter,

1 In its Decision and Certification of Representative of October 19, 1973, the Board inadvertently referred to Steve Groves as Clarence Groves. This inadvertence is hereby corrected.



IT IS HEREBY ORDERED that the Employer's Motion for Reconsideration be, and it hereby is, denied as lacking in merit, and containing nothing not previously considered by the Board. [2]

Dated, Washington, D. C., November 6, 1973.

By direction of the Board:

Mario A. Laure, Jr.

Assistant Executive Secretary

43

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION TWENTY-FIVE**

**WRIGHT MOTORS, INC.,**

and Case No. 25-CA-6576

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

**COMPLAINT AND NOTICE OF HEARING**

It having been charged by Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, that Wright Motors, Inc., herein called the Respondent, has engaged in, and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended,

2 In view of this action, Respondent's Motion to Vacate Trial Date, filed in Cases 25-CA-5626 and 25-CA-5742 is moot.

61 Stat. 136, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director for Region Twenty-five, pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations – Series 8, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge was filed by the Union on October 2, 1974 and served on the Respondent by registered mail on or about October 3, 1974.

2. (a) The Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana.

(b) At all times material herein, the Respondent has maintained its principal office and place of business at Evansville, Indiana, herein called the facility, and is, and has been at all times material herein, engaged at said facility and location in the sale, service and distribution of new and used cars, accessories, parts, and related products.

(c) During the past twelve months, a representative period, the Respondent, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded $500,000.00. During the same representative period of time the Respondent shipped and transported products valued in excess of $50,000.00 from its place of business in interstate commerce directly to States other than the State of Indiana. During the same representative period of time, the Respondent received goods valued in excess of $50,000.00 transported to its place of business in interstate commerce directly from States other than the State of Indiana.

(d) The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the



meaning of Section 2 (6) and (7) of the Act.

3. The Union is, and has been at all times material herein; a labor organization within the meaning of Section 2 (5) of the Act.

4. At all times material herein, the following-named person occupied the position set opposite his name, and has been and is now an agent of the Respondent at its facility, acting on its behalf, and is a supervisor within the meaning of Section 2 (11) of the Act:

| | |
|---|---|
| George A. Wright | President and Majority Stockholder |

44 5. (a) All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Respondent at its facility exclusive of all office clerical employees, dispatchers, all professional employees, all guards and all supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

(b) On or about June 5, 1973, a majority of the employees of the Respondent in the unit described above in paragraph 5 (a), by a secret ballot election conducted under the supervision of the Regional Director for Region Twenty-five of the National Labor Relations Board, designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent, and on or about October 19, 1973, the National Labor Relations Board certified the Union as the exclusive collective bargaining representative of the employees in said unit.

(c) At all time since October 19, 1973, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 5 (a), and, by virtue of Section 9 (a) of the Act, has been, and is now, the exclusive representative of all

the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(d) Commencing on or about April 2, 1974, and continuing to date, and more particularly on July 8, 1974, the Union has requested, and is requesting, the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees of the Respondent in the unit described above in paragraph 5 (a).

(e) Commencing on or about April 2, 1974, and continuing to date, and more particularly on or about July 17, 1974, the Respondent did refuse to recognize and/or bargain with the Union notwithstanding that the Union was at the time the duly designated exclusive collective-bargaining representative of the employees, as described above in paragraph 5 (a).

(f) On January 30, 1974, the Union mailed to the Respondent a letter requesting to bargain, to which the Respondent answered by letter on February 1, 1974. On July 8, 1974, the Union, by letter, again requested the Respondent to bargain, and to which the Respondent answered by letter on July 17, 1974. These letters, marked respectively Appendixes A, B, C and D are attached hereto and made a part hereof.

6. By the Acts described above in paragraph 5, and by each of said acts, the Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the representatives of its employees, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) and Sections 2 (6) and (7) of the Act.

7. By the acts described above in paragraphs 5 and 6, and by each of said acts, the Respondent did interfere with, restrain,



and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

8. The acts of the Respondent described in paragraphs 5, 6 and 7 above, occurring in connection with the operations of the Respondent described in paragraph 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

9. The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

45 PLEASE TAKE NOTICE that on the 11th day of November, 1974, at 10:00 a.m. (CST), at Room 301, United States District Courtroom, New Federal Building, 101 N. W. 7th Street, Evansville, Indiana, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found

by the Board. Immediately upon the filing of its answer, the Respondent shall serve a copy thereof on each of the other parties.

DATED AT Indianapolis, Indiana, this 10th day of October, 1974.

George M. Dick
Acting Regional Director
National Labor Relations Board
Region Twenty-five
Sixth Floor, ISTA Center
150 West Market Street
Indianapolis, Indiana 46204

45(A) January 30, 1974

NLRB
25th Region
Indianapolis

'74 Oct 2 PM 2:07

Wright Motors, Inc.
109 Southeast Third Street
Evansville, Indiana 47708

ATTENTION: Mr. George A. Wright
President

Dear Mr. Wright:

According to the National Labor Relations Board certification, we would like to meet with you and negotiate a collective bargaining agreement.

We will be available for such a meeting during the first week of February, or the second week of February, 1974.



Please let us know what date during these two weeks we can meet with you.

Very truly yours,

C. K. Arden, President
and Business Manager

CKA/mc

cc: Mr. Joe Kluemper, Jr.
Local Union #215

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

"Appendix A"

SENDER: Be sure to follow instructions on other side

Please Furnish Service(s) Indicated By Checked Block(s)
(Additional charges required for these services)

☐ Show to whom, date and address where delivered ☐ Deliver ONLY to address

RECEIPT
Received the numbered article described below

| | |
|---|---|
| Registered No. | Signature or Name of Addressee (Must always be filled in) |
| Delivered No. 899441 | 1 Signature of Addressee's Agent, If Any |
| Insured No. | |
| Date Delivered | Show Where Delivered (Only if requested, include Zip Code. |

45(B)

WRIGHT MOTORS, INC.
109 S. E. Third Street
EVANSVILLE, INDIANA 47708
Phone 812 . 422-3214

Certified #830035

NLRB
25th Region
Indianapolis

February 1, 1974

Mr. C. K. Arden, President
and Business Manager
Chauffeurs, Teamsters, and Helpers
Local Union 215
825 Walnut Street
Evansville, Indiana 47713

'74 Oct 2 PM 2:07

Dear Mr. Arden:

This will acknowledge receipt of your letter dated January 30, 1974.

Because of the fact that we believe that your Union does not lawfully represent our employees because of erroneous rulings by the National Labor Relations Board in a representation case, we cannot meet with you for any purpose.

We have decided to test the validity of the certification issued you in the representation case.

Very truly yours,

George A. Wright, President

GAW/t

"Appendix B"



45(C)

July 8, 1974

Mr. George A. Wright, President
Wright Motors, Inc.
4500 Division Street
Evansville, Indiana 47715

Dear Mr. Wright:

Again, we are writing to you and urging that you meet with us so that we can negotiate a collective bargaining agreement.

Please let us know what date you can meet and the time and place.

Very truly yours,

C. K. Arden, President
and Business Manager

NLRB
25th Region
Indianapolis

CKA:ej

Registered mail
Return receipt requested

cc: Joe Kluemper, Jr.
Local #215

'74 Oct 2 PM 2:08

"Appendix C"

SENDER: Be sure to follow instructions on other side

Please Furnish Service(s) Indicated By Checked Block(s)
(Additional charges required for these services)

☐ Show to whom, date and address where delivered

☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below

Registered No. 51674

Signature or Name of Addressee (Must always be filled in)

Delivered No. (1)

(2) Insured No.

Signature of Addressee's Agent, If Any

Date Delivered July 9

Show Where Delivered (Only if requested, include Zip Code.

45(D)

Wright Motors, Inc.
4500 Division Street
Evansville, Indiana 47715
Phone 812. 479-3131

July 17, 1974

Mr. C. K. Arden, President
and Business Manager
Chauffeurs, Teamsters, and Helpers
Local Union 215
825 Walnut Street
Evansville, Indiana 47713

Dear Mr. Arden:

In reply to your letter of July 8, 1974, please refer to our letter of February 1, 1974.



Very truly yours,

WRIGHT MOTORS, INC.

George A. Wright
President

GAW/jm

Registered mail
Return receipt requested

"Appendix D"



**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION TWENTY-FIVE**

**WRIGHT MOTORS, INC.**

and

Received Oct 21 1974
Div. of Judges
NLRB Wash., D. C.
Case No. 25-CA-6576

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

RECEIVED
'74 Oct 17 AM 10:36

**ANSWER TO COMPLAINT**

Respondent hereby files its answer to the complaint herein as follows:

1. Respondent admits the allegations of rhetorical paragraph 1.

2. Respondent admits the allegations of rhetorical paragraph 2. (a), (b), (c) and (d).

3. Respondent admits the allegations of rhetorical paragraph 3.

4. Respondent admits the allegations of rhetorical paragraph 4.

5. (a) Respondent admits the allegations of rhetorical paragraph 5 (a).

5. (b) Respondent would admit that on or about June 5, 1973 there was an election held at Respondent's dealership in Evansville, Indiana, and Respondent would also admit the factual allegations contained in paragraph 5. (b), but would deny any legal intendment that a lawful majority of its employees designated Charging Party as a representative for the purpose of collective bargaining, as shown by Exhibits A through C, attached hereto and submitted to the Board as the
47 basis for Respondent's position on certain challenged ballots in a companion representation case, and Respondent is contending herein that said position should have been sustained based on the exhibits attached hereto, or in the alternative that a hearing should have been held on said position.

5. (c) Respondent denies the allegations of rhetorical paragraph 5. (c).

5. (d) Respondent would admit the factual allegations contained herein as to the occurrence of said event, but would deny that Charging Party's commencement of request for recognition was on or about April 2, 1974, and would deny the legal conclusion that said request is continuing to date.

5. (e) Respondent would admit the factual allegations contained in this paragraph, but would deny that Respondent's refusal to bargain commenced on or about April 2, 1974, and



would also deny the legal conclusion that said refusal is continuing to date.

5. (f) Respondent would admit the factual allegations contained in paragraph 5. (f), and would, in light of these factual allegations, move the Board for summary judgment in this matter, in that as the face of the complaint shows, the charge herein was served by registered mail on Respondent on or about October 3, 1974, and Respondent's refusal to bargain was dated February 1, 1974, and therefore more than six (6) months have elapsed between Respondent's refusal to bargain and Charging Party's filing of the charge herein, and thus the 10 (b) period has run. In addition, Respondent would also affirmatively plead that this entire matter is controlled by Section 10 (b) of the Act, which states in relevant part that
48 "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge." Further affirmatively pleading, Respondent would state that any Board rulings in any form, contravening the six month statutory requirement contained in Section 10 (b) of the Act were invalidly adopted and would in any event be contrary to law and the plain meaning of the statute involved, and application of any rule other than the six month period to Respondent under the plain meaning of Section 10 (b) of the Act, would amount to a denial of due process and equal protection of the laws, as provided in the Constitution of the United States, and would contravene the policy of Congress in enacting Section 10 (b) of the Act, which was designed to promote industrial harmony and prevent labor unrest.

6. Respondent denies the allegations of rhetorical paragraph 6.

7. Respondent denies the allegations of rhetorical paragraph 7.

8. Respondent denies the allegations of rhetorical paragraph 8.

9. Respondent denies the allegations of rhetorical paragraph 9.

WHEREFORE, Respondent asks that the complaint filed herein be dismissed for the reasons stated above.

Respectfully submitted,

KAHN, DEES, DONOVAN & KAHN

By

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Of Counsel

JKP

55

216 NLRB No. 50

D--9560
Evansville, Ind.

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WRIGHT MOTORS, INC.**

File in
Formal File R

and

Case 25-CA-6576

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**



## DECISION AND ORDER

Upon a charge filed on October 2, 1974, by Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Wright Motors, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a complaint on October 10, 1974, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) and (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on October 19, 1973, following a Board election in Case 25-RC-5320, the Union was duly certified as the exclusive collective-bargaining representative of
56 Respondent's employees in the unit found appropriate; [1] and that, commencing on or about July 17, 1974, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On October 17, 1974, Respondent filed its answer to the complaint admitting in part, and

1 Official notice is taken of the record in the representation proceeding, Case 25-RC-5320, as the term "record" is defined in Secs. 102.68 and 102.69 (f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F. 2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F. 2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F. Supp. 573 (D.C. Va., 1957); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9 (d) of the NLRA.

denying in part, the allegations in the complaint.

On November 1, 1974, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and to strike portions of the Respondent's answer to the complaint. Subsequently, on November 19, 1974, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent opposes the instant motion on two grounds. First it argues that the certification issued the Union in the underlying representation proceeding is invalid
57 because challenges to two ballots therein were erroneously sustained, or that a hearing is required thereon. Second, Respondent argues that this proceeding is barred by Section 10 (b) of the Act because its alleged refusal to bargain occurred more than 6 months prior to the filing of the charge and moves for Summary Judgment and dismissal of the complaint on this basis. The General Counsel in support of his motion, argues that the issue concerning the challenged ballots was litigated in the representation proceeding and thus may not be relitigated herein, and that this action is not barred by Section 10 (b) because the Union's request to bargain was within 6 months of the filing of the charge. On essentially the same grounds, the General Counsel also moves to strike those portions of Respondent's answer which put the above-mentioned matters in issue.



With regard to Respondent's contention that the challenges to two ballots should have been overruled, we have reviewed the record in the representation proceeding, Case 25-RC-5320, to the extent necessary to determine if this issue was litigated therein, as submitted by the General Counsel. It appears that the election conducted on June 5, 1973, pursuant to a (Stipulation for Certification Upon Consent Election resulted in a 14 to 12 vote in favor of the Union, with 3 challenged ballots.) After an investigation, the Regional Director issued a report, *inter alia*, on the challenges, recommending that the challenges of two ballots be sustained as the ballots were cast by employees who were close relatives of owners and managers of the Respondent, and the remaining challenged ballot be left unresolved as it was no longer determinative of the election results. Respondent filed exceptions to this report, with affidavits attached,
58 together with various motions, basically assigning error to the Regional Director's findings and recommendations. On October 19, 1973, the Board issued a Decision and Certification of Representative, in which it noted that Respondent's exceptions raised no material issues warranting reversal or modification of the Regional Director's findings and recommendations and adopted the same, and certified the Union. Thereafter, Respondent filed further exceptions and a motion to reconsider the Board's ruling, asserting that the representation proceeding should be consolidated with pending unfair labor practice proceedings for hearing, and noting that the Board had erred in its designation of one of the employees whose ballot had been challenged. On November 6, 1973, the Board denied Respondent's motion as it did not contain anything not previously considered by the Board, and corrected the inadvertent error in its previous decision.

It thus appears that the General Counsel's position is sound, as the issues concerning the challenged ballots, including the hearing thereon, were raised and considered in the underlying

representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8 (a) (5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. [2]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to re-examine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

With regard to Respondent's contention that this proceeding is barred by Section 10 (b), we note that the complaint alleges that the Union requested bargaining with Respondent on January 30, April 2, and July 8, 1974, and that Respondent refused to bargain on February 1, April 2, and July 17, 1974, respectively. In its answer to the complaint, Respondent denies the April 2, 1974, request and refusal, but does not dispute the July request and refusal which are also supported by uncontroverted letters of the Union's request and Respondent's refusal bearing the July dates attached to the complaint as exhibits. Inasmuch as the charge was filed on October 2, 1974, some 3 months after the Union's request and Respondent's refusal to bargain, and as the duty to bargain upon request is a continuing one, [3] we fine no merit in Respondent's Contention. Accordingly, Respondent's Motion for Summary Judgment and for dismissal of the complaint are hereby denied.

2 See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67 (f) and 102.69 (c).

3 *Louisiana Bunkers, Inc.*, 163 NLRB 656, 659 (1967).



In view of the foregoing determinations, we shall grant the General Counsel's Motion for Summary Judgment and motion to strike those portions of Respondent's answer raising the issues resolved herein.

On the basis of the entire record, the Board make the following:

60 Findings of Fact

I. The Business of the Respondent

Respondent is an Indiana corporation with its principal office and place of business located in Evansville, Indiana, where it is engaged in the sale, service, and distribution of new and used cars, accessories, parts, and related products. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded $500,000. During the same period, Respondent shipped and transported products valued in excess of $50,000 from its place of business in interstate commerce directly to States other than the State of Indiana. During the same period, Respondent received goods valued in excess of $50,000 transported to its place of business in interstate commerce directly from States other than the State of Indiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

61 II. The Labor Organization Involved

Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9 (b) of the Act:

> All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all guards, and supervisors as defined in the Act.

2. The certification

On June 5, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 25 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on October 19, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9 (a) of the Act.



B. The Request To Bargain and Respondent's Refusal

Commencing on or about July 8, 1974, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 17, 1974, and continuing at all
62 times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since July 17, 1974, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the

appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

63 In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## Conclusions of Law

1. Wright Motors, Inc., is an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2 (5) of the Act.

3. All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana establishment: but excluding all office clerical employees, dispatchers, all professional employees, all guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

64 4. Since October 19, 1973, the above-named labor organization has been and now is the certified and exclusive repre-



sentative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on or about July 17, 1974, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

## ORDER

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Wright Motors, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

65 (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is the exclusive bargaining representative of its employees in the following appropriate unit:

> All mechanics, body men, painters, general laborers, partsmen and service writers employed by the Employer at its Evansville, Indiana esta-

blishment: but excluding all office clerical employees, dispatchers, all professional employees, all guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Evansville, Indiana, facility copies of the attached notice marked "Appendix." [4] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in
66 conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[4] In the event that this order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."



(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C. Jan. 23 1975

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

68 **UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WRIGHT MOTORS, INC.**

and Case No. 25-CA-6576

**LOCAL 215, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**

**MOTION AND EXCEPTION**

Respondent files its exception to the Board's Decision and Order in the above matter, and a motion in the alternative to clarify, as follows:

1. Respondent respectfully excepts to the Board's conclusion that the motion for summary judgment filed by General Counsel should be sustained as a matter of law, due to the fact that there are substantial material issues of fact which would require a trial in this matter.

2. In the alternative, Respondent would ask for a clarification of the Board's recitation of the facts in this matter with reference to the fact that on January 30, 1974 Charging Party did in fact request bargaining with Respondent, and that charges were not filed in this matter until more than six months after this demand was made. It would seem clear that were the Board's position taken to its logical conclusion, there would never be a tolling of the 10 (b) period in a case of this type, since all the Union would need to do is drop a line to a respondent more often than every six months to perpetuate the 10 (b) period, contrary to its plain meaning.

69 WHEREFORE, Respondent makes its exception to the Board's ruling on General Counsel's motion for summary judgment for the record in this matter, and moves the Board to explicate its Decision on the 10 (b) issue in this matter, particularly in light of such cases as *N.L.R.B. v. Bedford-Nugent Corp.*, 317 F. 2d 861 (CA-7 1963).

Respectfully submitted,

KAHN, DEES, DONOVAN & KAHN

By _____
Joseph A. Yocum
Attorneys for Respondent

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Tel: (812) 423-3183
Of Counsel



CERTIFIED COPY



**UNITED STATES COURT OF APPEALS**

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

For the Seventh Circuit
Chicago, Illinois 60604
Argued January 7, 1976

January 20, 1976.

Unpublished Order
Not To Be Cited

Before

Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. JULIUS J. HOFFMAN, Senior District Judge*

**NATIONAL LABOR RELATIONS BOARD,**
Petitioner,

No. 75-1514

vs.

**WRIGHT MOTORS, INC.,**
Respondent.

On Application for Enforcement of an Order of the National Labor Relations Board.

**ORDER**

Upon consideration of the record, the briefs, and the oral argument, we conclude that there was no abuse of discretion on the part of the Regional Director in sustaining the challenges to the ballots of employees Joe Wright and Steve Groves in the representation election. *NLRB* v. *Caravelle Wood Products, Inc.*, 466 F.2d 675 (7th Cir. 1972). Accordingly, the Board properly held that the Company (Respondent) violated section 8 (a) (5) of the National Labor Relations Act by refusing to bargain with the duly certified representative of its employees.

The Board's complaint under section 10 (e) of the Act was not time barred by section 10 (b) of the Act. *NLRB* v. *Basic*

*Wire Products, Inc.*, 516 F.2d 261 (6th Cir. 1975); *NLRB* v. *Louisiana Bunkers, Inc.*, 409 F.2d 1295 (5th Cir. 1969).

IT IS ORDERED that the Board's order shall be enforced.

* The Honorable Julius J. Hoffman, United States Senior District Judge for the Northern District of Illinois, is sitting by designation



Certified Copy

74 **UNITED STATES COURT OF APPEALS**

FOR THE SEVENTH CIRCUIT

| | | |
|---|---|---|
| **NATIONAL LABOR RELATIONS BOARD,** | ) | U.S.C.A. |
| | ) | FILED |
| Petitioner, | ) | 7th Circuit |
| | ) | |
| v. | ) | Feb 25 1976 |
| | ) | |
| **WRIGHT MOTORS, INC.,** | ) | No. 75-1514 |
| | ) | |
| Respondent. | ) | Thomas F. Strube |
| | | Clerk |

**JUDGMENT**

Before: LUTHER M. SWYGERT and ROBERT A. SPRECHER, Circuit Judges and JULIUS J. HOFFMAN, Senior District Judge*

THIS CAUSE came on to be heard upon an application of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent, Wright Motors, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, on January 23, 1975. The Court heard argument of respective counsel on January 7, 1976, and has considered the briefs and transcript of record filed in this cause. On January 20, 1976, the Court being fully advised in the premises, handed down its Order granting enforcement of the Board's Order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Seventh Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that the Respondent, Wright Motors, Inc., Evansville, Indiana, its officers, agents, successors, and assigns, abide by and perform the directions of the Board in said order contained.

IT IS FURTHER ORDERED AND ADJUDGED by the Court that costs shall be taxed against Respondent.

_____
Circuit Judge, United States
Court of Appeals for the
Seventh Circuit

Approved as to form:

_____
Attorney for Respondent

Clerk of the United States
Court of Appeals for the
Seventh Circuit.

A True Copy:
Teste:

No. 75-1703

Supreme Court, U. S.
FILED
JUL 11 1978
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1976

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WRIGHT MOTORS, INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

---

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JOHN S. IRVING,
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*Washington, D.C. 20570.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1976

---

No. 75-1703

WRIGHT MOTORS, INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

---

### OPINIONS BELOW

The order of the court of appeals (Pet. App. 63-64) is not reported. The decision and order of the National Labor Relations Board (Pet. App. 50-61) are reported at 216 NLRB No. 50.

### JURISDICTION

The judgment of the court of appeals was entered on February 25, 1976 (Pet. App. 65-66). The petition for a writ of certiorari was filed on May 24, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTIONS PRESENTED

1. Whether the Board properly sustained the Union's challenges to the eligibility of employees Wright and Groves to vote in the representation election.

2. Whether the Board's complaint, based on the employer's unlawful refusal to bargain some three months earlier, was time-barred by the National Labor Relations Act's six-month statute of limitations, Section 10(b), 29 U.S.C. 160(b).

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. 3-4.

## STATEMENT

Petitioner is a closely held corporate automobile dealership in Evansville, Indiana. On March 27, 1973, the Union[1] filed a petition to represent a unit of petitioner's employees (Pet. App. 19). Pursuant to a Stipulation for Certification Upon Consent Election[2] the Board's Regional Director conducted a representation election on June 5, 1973, resulting in 14 votes cast for the Union, 12 against, and 3 ballots challenged by the Union (Pet. App. 20). The two challenges at issue here were directed against the ballots of Joe Wright and Steve Groves on grounds pertaining to their familial relationship with petitioner's owners and officers. With respect to these challenges the Regional Director's investigation revealed that, during the relevant period, Joe Wright was employed by petitioner as a general laborer working part-time after school and full-time during summer

[1]Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

[2]The stipulated unit is: "All mechanics, bodymen, painters, general laborers, partsmen and service writers employed by [petitioner] at its Evansville, Indiana establishment; but excluding all office clerical employees, dispatchers, all professional employees, all guards and supervisors as defined in the Act" (Pet. App. 19).



vacations.[3] Joe Wright's father is petitioner's president, George Wright, who owns between 51 and 52 percent of petitioner's stock and actively directs its operations. Joe Wright obtained his job by asking his father for it. He was 16 years of age, and living with his parents, at the time of the election.

Steve Groves used to work part-time for petitioner as a general laborer, but began working full-time shortly after the election. His mother, Eleanor Groves, is the sister of petitioner's president George Wright and owns about 28 percent of petitioner's stock. Steve's aunt, Abigail Whitehead, also a sister of George Wright, owns the remaining 20 percent of the stock. Steve's father, Clarence, is petitioner's vice-president. Clarence, however, works for petitioner as a service writer and is not effectively involved in directing petitioner's operations, though he does have the authority, which he shares with another officer, to sign corporate checks. At the time of the election, Steve Groves was 18 and living with his parents.

On these facts, the Board, affirming its Regional Director, sustained the challenges to the ballots of Wright and Groves because their interests were "more closely identified with their parents, the owners and principals of the company, than with their co-workers" (Pet. App. 22, 32). Leaving the challenge to the remaining ballot unresolved since it no longer affected the election results, the Board certified the Union (Pet. App. 32-33).[4] Petitioner refused

[3]We are lodging with the Clerk affidavits obtained by the Regional Director in the course of his investigation. These affidavits, although attached to petitioner's exceptions to the Regional Director's report (see Pet. App. 27), are not set forth in the appendix to the petition. The facts that follow are not contested and are set forth in these affidavits. They are also summarized at Pet. App. 21-22.

[4]The Board's Regional Director recommended that all of the Union's election objections be overruled, but noted that the investigation had

to bargain. The Board, rejecting petitioner's claim (Pet. App. 54) that the statute of limitations barred issuance of the complaint, found that the refusal violated Section 8(a)(5) and (1) of the Act and entered a bargaining order (Pet. App. 59-61).

The court of appeals enforced the Board's order (Pet. App. 63-64).

## ARGUMENT

1. Petitioner contends (Pet. 6-9) that, since Wright and Groves were employees within the meaning of Section 2(3) of the Act, 29 U.S.C. 152(3),[5] they could not be excluded from the bargaining unit. There is no merit to this contention.

Section 9(b) of the Act, 29 U.S.C. 159(b), vests the Board with a broad discretion in determining bargaining units "to assure to employees the fullest freedom" in exercising their rights under the Act.[6] *Packard Motor Car Co.* v.

revealed evidence of additional misconduct by petitioner that was the subject of an unfair labor practice complaint issued previously (Board Case No. 25-CA-5626) (Pet. App. 22-24). In order to resolve this additional issue insofar as it related to the election, the Director consolidated the representation proceeding with that unfair labor practice case (Pet. App. 24). The Board found it unnecessary either to consolidate the two cases or to resolve the Union's election objections (Pet. App. 32, n. 1) since the certification of the Union had mooted issues relating to petitioner's election misconduct.

[5]Section 2(3) excludes from the definition of "employee" "any individual employed by his parent or spouse * * *." Wright and Groves, although related to petitioner's officers and stockholders, were, at least technically, employed by petitioner, a corporation.

[6]Section 9(b) provides: "The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *."



*National Labor Relations Board*, 330 U.S. 485, 491. See *National Labor Relations Board* v. *A. J. Tower Co.*, 329 U.S. 324, 330. The basic standard used by the Board, and approved by the courts, in grouping employees for bargaining purposes has been whether there is a "community of interest" regarding terms and conditions of employment. *E.g., Stanislaus Implement & Hardware Company*, 92 NLRB 897, 898; *Wheeler-Van Label Co.* v. *National Labor Relations Board*, 408 F. 2d 613, 616-617 (C.A. 2), certiorari denied, 396 U.S. 834. Frequently, the existence of a community of interest turns on the employees' job skills and duties. *United Aircraft Corp. (Hamilton Standard Div.)* v. *National Labor Relations Board*, 333 F. 2d 819 (C.A. 2), certiorari denied, 380 U.S. 910; *National Labor Relations Board* v. *Krieger-Ragsdale & Co.*, 379 F. 2d 517 (C.A. 7), certiorari denied, 389 U.S. 1041. However, the presence of common job characteristics may be outweighed by other factors.

Thus, the Board has long held that an employee's familial ties to company owners or managers may preclude a community of interest with fellow employees. *P. A. Mueller and Sons Inc.*, 105 NLRB 552; *International Metal Products Company*, 107 NLRB 65; *Foam Rubber City No. 2 of Florida, Inc.*, 167 NLRB 623. This policy is reasonable and therefore within the Board's broad discretion. In some cases, for example, the employee's "interests as a member of the governing family may well outweigh his interests as an employee of the corporation * * *," *Parisoff Drive-In Market, Inc.*, 201 NLRB 813, 814. Moreover, since the employee may be identified with management by his co-workers, his presence in a bargaining unit can inhibit the "fullest freedom" of others in the unit to exercise their rights under the Act. See *National Labor Relations Board* v. *Caravelle Wood Products, Inc. (Caravelle II)*, 504 F. 2d 1181, 1185 (C.A. 7).

Contrary to petitioner's suggestion, the Board did not simply apply a *per se* rule that an employee must be excluded whenever "his kinship to anyone with a substantial ownership interest can be shown" (Pet. 8). Rather, the Board's decision here reflects its current policy—inspired in part by the Seventh Circuit's decision in *National Labor Relations Board* v. *Caravelle Wood Products, Inc. (Caravelle I)*, 466 F. 2d 675, 679—of making a careful analysis in each case to ascertain whether, in spite of common job characteristics, exclusion is appropriate in light of all the circumstances pertaining to the familial bond between the employee and the company. See, *e.g.*, *Parisoff Drive-In Market, Inc., supra; Cerni Motor Sales, Inc.*, 201 NLRB 918; *Weyerhaeuser Company*, 211 NLRB 1012; *Pargas of Crescent City, Inc.*, 194 NLRB 616.

Thus, as the Board emphasized in its decision (Pet. App. 21-22), petitioner is a closely held corporation owned entirely by a brother and two sisters whose children are the challenged voters; two of petitioner's three officers are family members; George Wright, petitioner's president, majority stockholder, and principal director of operations, is the father of Joe Wright and uncle of Steve Groves; the mother of Steve Groves owns a substantial block of stock and his father is one of the three officers; and both challenged voters live at home with their parents. In these circumstances, the Board properly exercised its discretion in excluding Joe Wright and Steve Groves from the unit on the ground that they lacked a sufficient community of interest with the other employees. See *National Labor Relations Board* v. *Caravelle Wood Products, Inc. (Caravelle II), supra.*[7]

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[7] In *Cherrin Corporation* v. *National Labor Relations Board*, 349 F. 2d 1001, certiorari denied, 382 U.S. 981, the Sixth Circuit indicated a reluctance to exclude from a bargaining unit a woman related to the corporate owners absent evidence (which was found to exist) that she enjoyed a "special status" in terms of working conditions. 349 F. 2d at 1004-1005. See, similarly, *Uyeda* v. *Brooks*, 365 F. 2d 326 (C.A. 6). However, the court in *Cherrin* was following a then current Board rule requiring "special status" as well as family relationship. *International Metal Products Company, supra*, 107 NLRB at 67. The Board subsequently modified that policy in *Foam Rubber City No. 2 of Florida, Inc., supra* (excluding the children and spouses of individuals owning 50 percent or more of the corporate stock), and in later decisions, discussed above, which undertake a case-by-case analysis of all circumstances bearing on the existence of a community of interest. In view of these recent developments in Board law, there is no conflict between *Cherrin* and the decision by the court of appeals below. See *National Labor Relations Board* v. *Caravelle Wood Products, Inc. (Caravelle II), supra*, 504 F. 2d at 1185.



2. Petitioner also contends (Pet. 9-12) that the complaint was time-barred under Section 10(b) of the Act, 29 U.S.C. 160(b), which provides, in pertinent part: "* * * no complaint shall issue upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board * * *."

The Union was certified on October 19, 1973 (Pet. App. 30-33). On January 30, 1974, the Union requested petitioner to bargain with it (Pet. App. 40, 42-43) and on February 1 petitioner refused (Pet. App. 44); the Union made another bargaining request on July 8, 1974 (Pet. App. 45), and petitioner refused on July 17 (Pet. App. 46-47). On October 2, 1974, the Union filed an unfair labor practice charge with the Board and on October 10, 1974, the General Counsel of the Board issued his complaint (Pet. App. 51). In arguing that the complaint was time-barred, petitioner points to the fact that the initial refusal to bargain in February 1974 antedated the unfair labor practice charge by more than six months. For Section 10(b) purposes, however, the relevant unfair labor practice was petitioner's admitted refusal to bargain in July 1974. Since the charge and complaint were filed in October, the Board properly concluded (Pet. App. 54) that Section 10(b) does not bar the instant proceedings.

A "certification, if based on a Board-conducted election, must be honored for a 'reasonable' period, ordinarily 'one year' in the absence of 'unusual circumstances'," *Brooks* v. *National Labor Relations Board*, 348 U.S. 96, 98. See *Orion Corporation* v. *National Labor Relations Board*, 515 F. 2d 81, 84 (C.A. 7). Petitioner alleges no "unusual circumstances" that would alter its bargaining obligations as defined in *Brooks, supra*. Hence, it had a clear duty to honor, not only the February, but also the July bargaining request, which occurred within the certification year. The July refusal constituted a discrete, independent unfair labor practice neither related to, nor excused by, the earlier refusal. Therefore, the fact that petitioner may have committed a similar violation outside the Section 10(b) period is immaterial to the merits of the instant charge. *National Labor Relations Board* v. *Basic Wire Products, Inc.*, 516 F. 2d 261, 268 (C.A. 6). See *International Union, United A., A. & A. Imp. Wkrs.* v. *National Labor Relations Board (Aero Corp.)*, 363 F. 2d 702, 706-707 (C.A. D.C.), certiorari denied, 385 U.S. 973.

*Local Lodge No. 1424, IAM* v. *National Labor Relations Board (Bryan Mfg. Co.)*, 362 U.S. 411, on which petitioner relies (Pet. 11-12), is not to the contrary. There, a company and a union entered into a collective bargaining agreement containing a "union security" clause at a time when the union represented less than a majority of the employees. More than six months later, a charge was filed and a complaint issued alleging that continued enforcement of the agreement was an unfair labor practice. The Court held that the complaint was barred by Section 10(b) since (362 U.S. at 417):

> the entire foundation of the unfair labor charged was the Union's time-barred lack of majority status when the original collective bargaining agreement was signed. In the absence of that fact enforcement of this otherwise valid union security clause was wholly benign. [Footnote omitted.]



Here, by contrast, the finding of a violation requires no reference to petitioner's conduct outside the Section 10(b) period, although "earlier events may be utilized to shed light on the true character of matters occurring within the limitations period," *Local Lodge No. 1424, IAM, supra*, 362 U.S. at 416. The certification in this case, which issued outside the Section 10(b) period, is not an unfair labor practice which "serves to cloak with illegality" (*id.* at 417) an otherwise lawful refusal to bargain. See *National Labor Relations Board* v. *Basic Wire Products, Inc., supra*, 516 F. 2d at 268. Rather, the July refusal to bargain itself is an unfair labor practice and, indeed, the charge here presumes the validity of the certification.[8]

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[8]The purpose of Section 10(b) was to protect alleged violators from stale claims and to give them an opportunity to prepare defenses. See *Local Lodge No. 1424, IAM, supra*, 362 U.S. at 417. Since petitioner's sole defense to the unfair labor practice charge was the invalidity of the certification, an issue that had already been litigated in the representation proceeding, petitioner cannot claim that the preparation of its defense was in any way impaired by the lapse of more than six months between its original refusal to bargain and the subsequent one, covered by the unfair labor practice charge. Petitioner, therefore, misplaces its reliance (Pet. 10) on *National Labor Relations Board* v. *McCready and Sons, Inc.*, 482 F. 2d 872 (C.A. 6). That case holds that "application of the continuing obligation doctrine to a charge of refusal to execute a contract [was] inconsistent with the purposes of §10(b)" (*id.* at 875), since preparation of the defense required reference to facts surrounding the contract negotiations, which occurred more than six months after the filing of the charge. See *National Labor Relations Board* v. *Basic Wire Products, Inc., supra*, 516 F. 2d at 267-268.

## CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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